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Serial No.: 09/752,700

Docket No.: PU010003

Art Unit: 2623

Examiner: Johnny Ma

Appeal Brief (12 pages)

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PU010003  
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**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

**Applicant:** Anthony E. Stuart  
**Serial Number:** 09/752,700  
**Filing Date:** December 29, 2000  
**For:** ELECTRONIC PROGRAM GUIDE WITH RAPID TIME  
ADVANCEMENT FEATURE  
**Art Unit:** 2623  
**Examiner:** Johnny Ma

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**APPEAL BRIEF**

**Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450**

Sir:

In response to the final rejection of July 11, 2006, and further to the Notice of Appeal, Appellants hereby submit an Appeal Brief in accordance with 37 C.F.R. §41.37 for the above-referenced application.

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**I. Real Party in Interest**

The real party in interest is Thomson Licensing Inc.

**II. Related Appeals and Interferences**

There are no prior or pending appeals, interferences, or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

**III. Status of Claims**

Claims 1-6, 8-16 and 18-21 are pending in this application, and are rejected. Claims 7 and 17 have been previously cancelled. The rejection of claims 1-6, 8-16 and 18-21 is being appealed.

**IV. Status of Amendments**

No amendment has been filed subsequent to the final rejection of July 11, 2006.

**V. Summary of Claimed Subject Matter**

The claimed subject matter relates to a method and apparatus for providing an electronic program guide (page 1, lines 1-8). The electronic program guide includes a time line 106 having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker 108 can be moved (page 11, line 20 to page 12, line 6, and FIGS. 4 and 5). The electronic program guide may also include a time window 77 defining a first time period on the current day, wherein the time window 77 displays indicia for programs broadcast during the first time period of the current day (FIGS. 4 and 5). The marker 108 can be moved to a notch using navigation buttons of a remote control device 32 delineating a desired day and time in the future, thereby causing to be displayed in the time window 77 a second time period displaying indicia for programs to be broadcast during the second time period on the desired day and time (page 12, lines 7-18, and FIGS. 4 and 5).

PU010003  
Customer No. 24498

## **VI. Grounds of Rejection to be Reviewed on Appeal**

The following grounds of rejection are presented for review in this appeal:

(1) The rejection of claims 1-5, 8-15 and 18-21 under 35 U.S.C. §103(a) based on U.S. Patent No. 5,731,844 issued to Rauch et al. (hereinafter, "Rausch") in view of U.S. Publication No. 2005/0229215 by Schein et al. (hereinafter, "Schein") and further in view of U.S. Patent No. 6,867,764 issued to Ludtke (hereinafter, "Ludtke"); and

(2) The rejection of claims 6 and 16 under 35 U.S.C. §103(a) based on Rausch in view of Schein and further in view of U.S. Patent No. 6,664,984 issued to Schlarb et al. (hereinafter, "Schlarb").

## **VII. Argument**

### **A. Patentability of Claims 1-5, 8-15 and 18-21**

Claims 1-5, 8-15 and 18-21 are allowable under U.S.C. § 103(a) over Rausch in view of Schein and further in view of Ludtke for at least the following reasons.

One of ordinary skill in the art would have absolutely no motivation to combine the cited references in the manner proposed by the Examiner since the primary reference, Rausch, alone provides a complete solution for allowing users to scroll through program information for multiple days and times in an intuitive manner, albeit a different solution than that provided by the claimed invention. As such, the rejection of claims 1-5, 8-15 and 18-21 is the result of impermissible hindsight reconstruction and the selective picking and choosing elements of the prior art in an attempt to deprecate the claimed invention.

It is first noted that independent claims 1, 8, 12 and 18 define:

1. A method for providing an electronic program guide, comprising steps of:

enabling a display on a display device, wherein the display includes a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a

PU010003  
Customer No. 24498

current day and time to which a marker can be moved;

enabling a user to move the marker to one of the notches delineating a desired day and time in the future, thereby causing to be displayed in a time window displayed on the display device a time period displaying indicia for programs to be broadcast during the time period on said desired day and time.

8. A method for providing an electronic program guide, comprising steps of:

enabling a display on a display device, wherein the display includes a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker can be moved;

enabling the display to further include a time window defining a first time period on the current day, wherein the time window displays indicia for programs broadcast during the first time period of the current day; and

enabling a user to move the marker to one of the notches delineating a desired day and time in the future, thereby causing to be displayed in the time window a second time period displaying indicia for programs to be broadcast during the second time period on said desired day and time.

12. An apparatus for providing an electronic program guide, comprising:

a device for enabling a display including a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time; and

wherein a marker can be moved by user input to one of the notches delineating a desired day and time in the future, thereby causing to be displayed in a time window of the display a time period displaying indicia for programs to be broadcast during the time period on said desired day and time.

18. An apparatus for providing an electronic program guide, comprising:

a device for enabling a display including a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker can be moved, and also including a time window defining a first time period on the current day, wherein the time window displays indicia for programs broadcast during the first time period of the current day; and

wherein the marker can be moved by user input to one of the notches delineating a desired day and time in the future, thereby causing to be displayed in the time window a second time period

PU010003  
Customer No. 24498

displaying indicia for programs to be broadcast during the second time period on said desired day and time.

As indicated above, independent claims 1, 8, 12 and 18 define a method and apparatus for providing an electronic program guide. The electronic program guide includes a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker can be moved. The marker can be moved to a notch using navigation buttons of a remote control device delineating a desired day and time in the future, thereby causing to be displayed in a time window a time period displaying indicia for programs to be broadcast during the time period on the desired day and time.

In formulating the proposed combination, the Examiner relies on FIG. 2 of Rausch for disclosing a time scroll bar 224 for rapidly advancing a program guide. The program guide is made up of a schedule layout 200 including the time scroll bar 224 which a user can scroll to select time entries 215 that are different than the time entries displayed on a time axis 214 of a grid 210 (see FIG. 2 and column 7, lines 1-4). Schedule layout 200 also includes a day selector 220 with arrow buttons which a user can move a selected day chronologically forward or backward (see FIG. 2 and column 6, lines 60-64). In the aforementioned manner, Rausch provides a ***complete solution*** for allowing users to scroll through program information for multiple days and times in an intuitive manner, albeit a ***different solution*** than that provided by the claimed invention.

The Examiner admits, however, that Rausch fails to disclose, *inter alia*, "the time period the scroll bar 224 encompasses, i.e., the system response to transitions between different days" (see page 3 of final Office Action dated July 11, 2006), and relies on Schein for this element. In particular, the Examiner proposes modifying "the Rausch et al. time scroll bar for scrolling through available time entries with the Schein et al. scroll bar for scrolling through program information for multiple days and times for the purpose of allowing the system users to navigate the program [sic, guide] in an intuitive manner" (see page 4 of final Office Action dated July 11, 2006). However, one of ordinary skill in the art would have absolutely no motivation to

PU010003

Customer No. 24498

modify the time scroll bar 224 of Rausch using the teachings of Schein since Rausch already provides a ***complete solution*** for allowing users to scroll through program information for multiple days and times in an intuitive manner (albeit a ***different solution*** than that provided by the claimed invention).

The fact that the Examiner attempts to modify a reference that already provides a complete solution to a problem strongly suggests that the proposed combination is the product of impermissible hindsight reconstruction. Appellant notes that “[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Moreover, “[i]t is impermissible . . . to engage in hindsight reconstruction of the claimed invention, using the applicant’s structure as a template and selecting elements from references to fill the gaps.” In re Gorman, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). In this case, the fact that the Examiner relies on Schein even when Rausch provides a ***complete solution*** for allowing users to scroll through program information for multiple days and times in an intuitive manner strongly suggests that the proposed combination is the product of impermissible hindsight reconstruction. For this reason alone, the rejection of claims 1-5, 8-15 and 18-21 should be reversed.

Even if the cited references were properly combinable (which they are not), the references, whether taken individually or in combination, fail to teach or suggest all elements of the claimed invention.

It is again noted that independent claims 1, 8, 12 and 18 include:

“enabling a display on a display device, wherein the display includes a ***time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time*** to which a marker can be moved” (emphasis added; see claim 1).

“enabling a display on a display device, wherein the display includes a ***time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time*** to which a marker can be moved”

PU010003  
Customer No. 24498

(emphasis added; see claim 8),

"a device for enabling a display including *a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time*" (emphasis added; see claim 12), and

"a device for enabling a display including *a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time* to which a marker can be moved" (emphasis added; see claim 18).

As indicated above, independent claims 1, 8, 12 and 18 each include "a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time." None of the references, whether taken individually or in combination, teach or suggest, *inter alia*, this element of the claimed invention.

On pages 3 and 4 of the final Office Action dated July 11, 2006, the Examiner admits that Rauch fails to disclose the time period encompassed by its time scroll bar 224, and relies on Schein for allegedly curing this deficiency. In particular, the Examiner states:

"However, the Rausch et al. reference does not specifically disclose the time period the time scroll bar 224 encompasses, i.e., the system response to transitions between days.

Now note the Schein et al. reference that discloses an interactive computer system for providing television schedule information wherein the viewer can scroll to move forward and backward in time (Schein [0083]) and the user can use the scroll bar to transition between different times and days as illustrated in Figure 12B, illustrating a transition between days (10:00 pm and 12:00 am). Further note, the Schein reference teaches that the scroll bar is visually proportional to the total information in the program matrix 706 (Schein [0080]) and that the visually proportional scroll bar is equally applicable to timing information (Schein [0083]). *Thus the Schein et al. reference discloses a scroll bar for scrolling through time slots within a time period comprising a plurality of days, meeting the claimed 'times and days in the future from a current day and time to which a marker can be moved.'*" (emphasis added)

PU010003  
Customer No. 24498

As indicated above, the Examiner relies on paragraphs [0080] and [0083] and FIG. 12B of Schein for allegedly disclosing a time line having time slots for multiple times and days in the future from a current day and time. However, the cited portions of Schein fail to teach or suggest this element. In particular, FIG. 12B of Schein discloses a channel guide 704 having a scroll bar 720 which "may be used for large-scale movement through hundreds of channels/sources by navigating to bar 720 and then vertically moving bar 720" (see FIGS. 12A-12B, and paragraphs [0080] and [0083]). However, nowhere does Schein teach or suggest that channel guide 704 includes "a time line . . . delineating times and days [plural emphasized] in the future from a current day and time" as claimed. In other words, channel guide 704 shown in FIG. 12B of Schein is capable of displaying program information for a time period covering portions of two days at the most (e.g., from 3:30 PM to 7:00 AM in FIG. 12B). In contrast, the claimed "time line" covers portions of at least three days (i.e., "a current day" plus "days [plural] in the future" from the "current day"). Accordingly, the proposed combination including the teachings of Schein fails to teach or suggest all elements of the claimed invention.

The Ludtke reference is unable to remedy the deficiencies of the Rausch and Schein combination pointed out above. In particular, the Ludtke reference discloses a data entry user interface for devices such as personal digital assistants (PDAs). Ludtke fails to teach or suggest, *inter alia*, a method or apparatus "for providing an electronic program guide" including "a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time" as claimed. Accordingly, Appellants respectfully request that the Board reverse the rejection of claims 1-5, 8-15 and 18-21 under 35 U.S.C. §103(a).

#### **B. Patentability of Claims 6 and 16**

Claims 6 and 16 are allowable under 35 U.S.C. §103(a) over Rausch in view of Schein and Schlarb for at least the same reasons stated above in conjunction with claims 1-5, 8-15 and 18-21 since: (i) the Rausch/Schein combination is improper as being the product of impermissible hindsight reconstruction, and (ii) even if Rausch

PU010003  
Customer No. 24498

and Schein were properly combinable (which they are not), Schlarb fails to remedy the deficiencies of the Rausch/Schein combination.

In particular, Schlarb discloses a method and system for the identification of pay-per-view programming which enables users to scroll through program information in a manner similar to Rausch and Schein. Schlarb fails to teach or suggest, *inter alia*, "a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time" as claimed. In view of the foregoing arguments and remarks, Appellants respectfully request the Board to reverse the rejection of claims 6 and 16 under 35 U.S.C. § 103(a).

### VIII. Claims Appendix

1. A method for providing an electronic program guide, comprising steps of:  
enabling a display on a display device, wherein the display includes a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker can be moved;  
enabling a user to move the marker to one of the notches delineating a desired day and time in the future, thereby causing to be displayed in a time window displayed on the display device a time period displaying indicia for programs to be broadcast during the time period on said desired day and time.
2. The method according to Claim 1, wherein the notches delineate times that are hours, days, weeks or months in the future from the current day and time.
3. The method according to Claim 1, further comprising a step of enabling the user to move the time window to view desired program indicia.
4. The method according to Claim 3, further comprising a step of enabling the user to move the time window in one-half hour increments.

PU010003  
Customer No. 24498

5. The method according to Claim 1, wherein the marker can be selectively moved forward and backward in time.

6. The method according to Claim 1, wherein the marker can be selectively moved backwards in time to display indicia for programs that were already broadcast.

8. A method for providing an electronic program guide, comprising steps of:  
enabling a display on a display device, wherein the display includes a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker can be moved;

enabling the display to further include a time window defining a first time period on the current day, wherein the time window displays indicia for programs broadcast during the first time period of the current day; and

enabling a user to move the marker to one of the notches delineating a desired day and time in the future, thereby causing to be displayed in the time window a second time period displaying indicia for programs to be broadcast during the second time period on said desired day and time.

9. The method according to Claim 8, wherein the second time period is for a period of time on a different day than the first time period.

10. The method according to Claim 8, wherein the second time period overlaps the first time period.

11. The method according to Claim 8, wherein the first and second time periods are successive time periods.

12. An apparatus for providing an electronic program guide, comprising:  
a device for enabling a display including a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time; and

PU010003  
Customer No. 24498

wherein a marker can be moved by user input to one of the notches delineating a desired day and time in the future, thereby causing to be displayed in a time window of the display a time period displaying indicia for programs to be broadcast during the time period on said desired day and time.

13. The apparatus according to Claim 12, wherein the notches delineate times that are hours, days, weeks and months in the future from the current day and time.

14. The apparatus according to Claim 12, wherein the time window can be moved in one-half hour increments.

15. The apparatus according to Claim 12, wherein the marker can be selectively moved forward and backward in time.

16. The apparatus according to Claim 12, wherein the marker can be selectively moved backwards in time to display indicia for programs that were already broadcast.

18. An apparatus for providing an electronic program guide, comprising:  
a device for enabling a display including a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker can be moved, and also including a time window defining a first time period on the current day, wherein the time window displays indicia for programs broadcast during the first time period of the current day; and

wherein the marker can be moved by user input to one of the notches delineating a desired day and time in the future, thereby causing to be displayed in the time window a second time period displaying indicia for programs to be broadcast during the second time period on said desired day and time.

19. The apparatus according to Claim 18, wherein the second time period is for a period of time on a different day than the first time period

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20. The apparatus according to Claim 18, wherein the second time period overlaps the first time period.

21. The apparatus according to Claim 18, wherein the first and second time periods are successive time periods.

**IX. Evidence Appendix**

None.

**X. Related Proceedings Appendix**

None.

Please charge the fee for this Appeal Brief to Deposit Account 07-0832.

Respectfully submitted,  
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